

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Zenith Products Corp.	DEFENDANTS Elite Home Fashions, LLC
(b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant <u>Gwinnett</u> (IN U.S. PLAINTIFF CASES ONLY)
(c) Attorney's (Firm Name, Address, and Telephone Number) Panitch Schwarze Belisario & Nadel LLP, One Commerce Square, 2005 Market Street, Philadelphia, PA 19103-7086 (215) 965-1330	NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																								
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input checked="" type="checkbox"/> 2</td> <td><input checked="" type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input checked="" type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input checked="" type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input checked="" type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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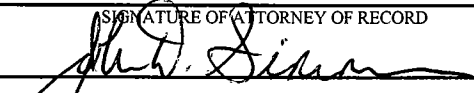
IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition

V. ORIGIN (Place an "X" in One Box Only)							
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>35 U.S.C. Sec. 271</u> Brief description of cause: <u>Patent Infringement</u>
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION DEMAND \$ _____ UNDER F.R.C.P. 23 To be determined, triple damages, JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions): <u>injunction.</u> JUDGE _____ DOCKET NUMBER _____
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DATE 11/03/2008	SIGNATURE OF ATTORNEY OF RECORD  (PA ID# 202405)
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FOR OFFICE USE ONLY	RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____
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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Zenith Products Corp.
400 Lukens Drive
New Castle, Delaware 19720

Plaintiff,

vs.

Elite Home Fashions, LLC
4200 Steve Reynolds Blvd.,
Suite # 14
Norcross, Georgia 30093

Defendant.

CIVIL ACTION NO. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Zenith Products Corp. ("Zenith"), brings this Complaint for patent infringement against Defendant Elite Home Fashions, LLC ("Elite"), as outlined below.

THE PARTIES

1. Plaintiff Zenith Products Corp. is a Delaware corporation having a principal place of business located at 400 Lukens Drive, New Castle, Delaware 19720.

2. Upon information and belief, Defendant Elite Home Fashions, LLC is a Georgia Limited Liability Company having a principal place of business located at 4200 Steve Reynolds Blvd., Suite #14, Norcross, Georgia 30093.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331-32 and 1338(a). Personal jurisdiction is proper pursuant to 42 Pa.C.S. § 5322.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and § 1400(b) in that, upon information and belief, infringing activities occurred in this district.

FACTS

5. Plaintiff is the owner of U.S. Patent No. D542,897, issued by the United States Patent and Trademark Office on May 15, 2007, entitled, “Curved Shower Rod” (hereinafter “the ‘897 patent”).

6. The ‘897 patent is valid and enforceable. The term of the ‘897 patent is set to expire on May 15, 2021. A true and correct copy of the ‘897 patent is attached to this Complaint as Exhibit A.

7. Plaintiff is the assignee of all right, title, and interest in and to the ‘897 patent and possesses all rights of recovery under the ‘897 patent, including the right to sue for infringement and recourse for damages.

8. Defendant has used, manufactured, sold, offered for sale, and/or imported at least a curved shower rod (“Infringing Product”) in the U.S.

9. On or about October 23, 2008, Plaintiff’s representative in the Commonwealth of Pennsylvania visited Target Corporation’s website www.target.com and found an offer for sale of a curved shower rod entitled “Curved Shower Rod” (http://www.target.com/Rod-Curtain-Ring-3-Set/dp/B00192A6XY/sr=1-14/qid=1224703065/ref=sr_1_14/602-7280191-6195858?ie=UTF8&index=target&rh=k%3Ashower%20rod&page=1). A copy of the offer for sale of the infringing product from Target Corporation’s website is attached hereto as Exhibit B.

Upon information and belief, the product available through www.target.com was offered for sale and/or sold by Defendant to Target Corporation. Upon information and belief, Defendant is aware of the offer for sale of the Infringing Product on Target Corporation's website.

10. Defendant has not sought, nor obtained, a license under the '897 patent and is not authorized or permitted to market, manufacture, use, offer for sale, sell or import the invention claimed in the '897 patent.

COUNT I
INFRINGEMENT OF THE '897 PATENT

11. Plaintiff realleges and incorporates by reference paragraphs 1 through 10 of this Complaint as though fully set forth herein.

12. The claim of the '897 patent is presumed valid pursuant to 35 U.S.C. § 282.

13. Defendant, in violation of 35 U.S.C. § 271, has been and is currently infringing, contributorily infringing and/or inducing others to infringe the claim of the '897 patent, either literally or under the doctrine of equivalents, by making, causing to be made, using, offering for sale, selling and/or importing into the United States, without license or authority, at least the Infringing Product, which is claimed in the '897 patent.

14. Defendant has willfully infringed and, upon information and belief, will continue to willfully infringe upon the claim of the '897 patent by the use, manufacture, offer for sale, sale, and/or importation of the Infringing Product unless this Court enjoins Defendant's infringing activities.

15. As a result of the Defendant's willful infringement of the '897 patent, Plaintiff has been damaged to an extent not yet determined.

16. Plaintiff is entitled to monetary damages adequate to compensate Plaintiff for the infringement of the Defendant, increased damages under 35 U.S.C. § 284, together with interest, costs, and attorneys fees, and is entitled to enjoin Defendant from further infringement of the '897 patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests all legal and equitable relief as may be recoverable for the foregoing offenses, including:

- (a) a judgment that Defendant infringes the claim of the '897 patent;
- (b) a permanent injunction enjoining Defendant, and those in active concert or participation with it, from infringing the '897 patent;
- (c) an accounting for damages arising from the infringement of the '897 patent by the Defendant and those in privity with it;
- (d) an award of damages adequate to compensate for the infringement of the '897 patent, together with prejudgment and post-judgment interest thereon, and costs fixed by the Court, as provided by 35 U.S.C. § 284;
- (e) a judgment that the infringement of the '897 patent was and is willful, and an award to Plaintiff of increased damages in accordance with 35 U.S.C. § 284;
- (f) an accounting and payment by Defendant to Plaintiff of all profits realized by Defendant from the unlawful acts complained of herein pursuant to 35 U.S.C. § 289;
- (g) a declaration that this is an exceptional case and that Plaintiff be granted reasonable attorneys' fees in accordance with 28 U.S.C. § 285; and

- (h) a grant to Plaintiff of any such other relief as the Court may deem just, equitable, or proper.

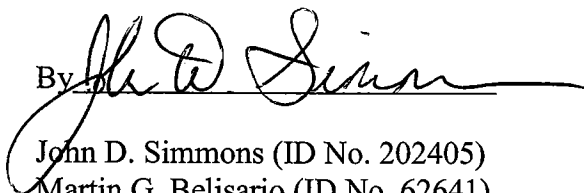
DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

Date: November 3, 2008

By



John D. Simmons (ID No. 202405)

Martin G. Belisario (ID No. 62641)

PANITCH SCHWARZE BELISARIO & NADEL L.L.P.

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E-Mail: jsimmons@panitchlaw.com

Attorneys for Plaintiff
Zenith Products Corp.

EXHIBIT A



US00D542897S

(12) **United States Design Patent** (10) **Patent No.:** **US D542,897 S**
Harwanko (45) **Date of Patent:** **** May 15, 2007**

(54) **CURVED SHOWER ROD**(75) Inventor: **Jeffrey Harwanko**, Wilmington, DE (US)(73) Assignee: **Zenith Products Corp.**, New Castle, DE (US)(**) Term: **14 Years**(21) Appl. No.: **29/255,971**(22) Filed: **Mar. 14, 2006**(51) **LOC (8) Cl.** **23-02**(52) **U.S. Cl.** **D23/304**(58) **Field of Classification Search** **D23/283,**
D23/303-34; 4/552, 596-597, 610, 615,
4/900, DIG. 15; D8/376

See application file for complete search history.

(56) **References Cited****U.S. PATENT DOCUMENTS**

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D498,663 S	11/2004	Moore

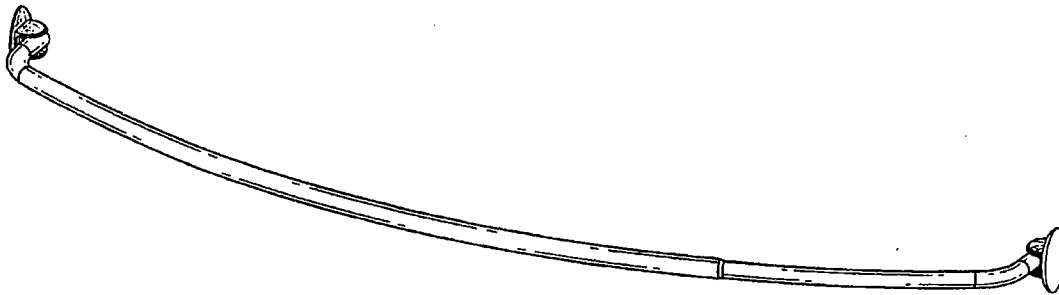
* cited by examiner

Primary Examiner—Robert A. Delehanty(74) *Attorney, Agent, or Firm*—Akin Gump Strauss Hauer & Feld, LLP(57) **CLAIM**

The ornamental design for a curved shower rod, as shown and described.

DESCRIPTION

FIG. 1 is a top perspective view of a curved shower rod in accordance with my new design;
 FIG. 2 is a top plan view thereof;
 FIG. 3 is a front elevational view thereof;
 FIG. 4 is a bottom plan view thereof;
 FIG. 5 is a rear elevational view thereof;
 FIG. 6 is a left-side elevational view thereof; and,
 FIG. 7 is a right-side elevational view thereof.

1 Claim, 3 Drawing Sheets

U.S. Patent

May 15, 2007

Sheet 1 of 3

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Fig. 1

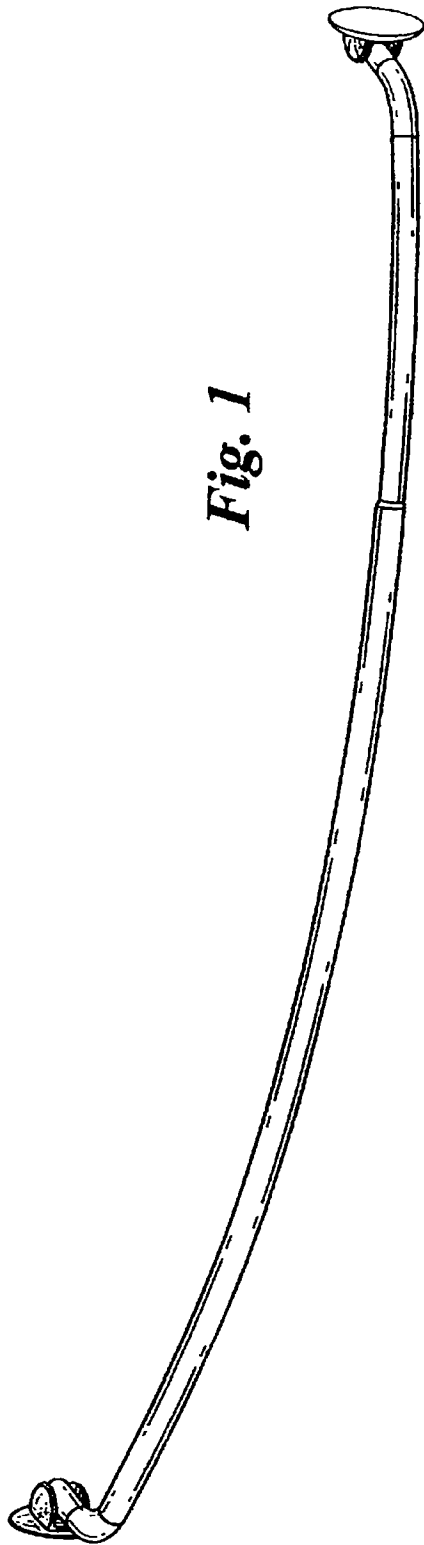


Fig. 7

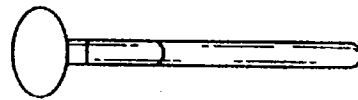
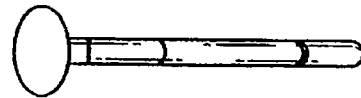


Fig. 6



U.S. Patent

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Sheet 2 of 3

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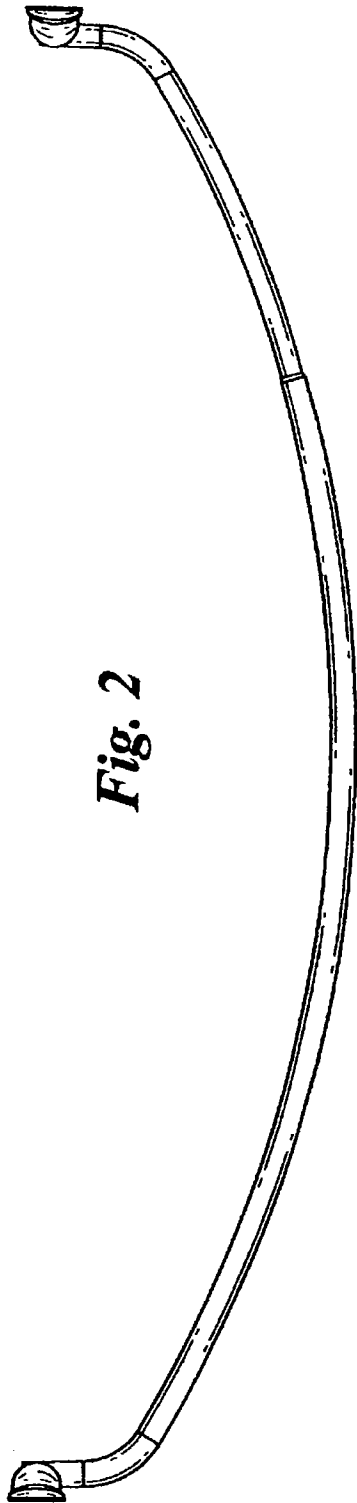


Fig. 2

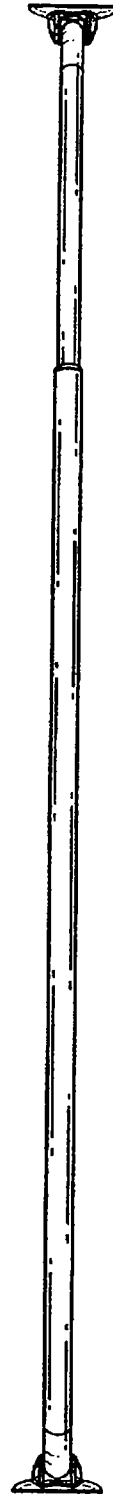


Fig. 3

U.S. Patent

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Sheet 3 of 3

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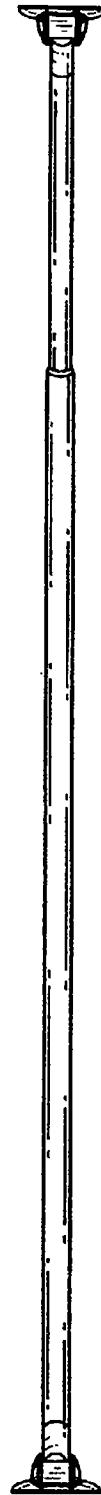
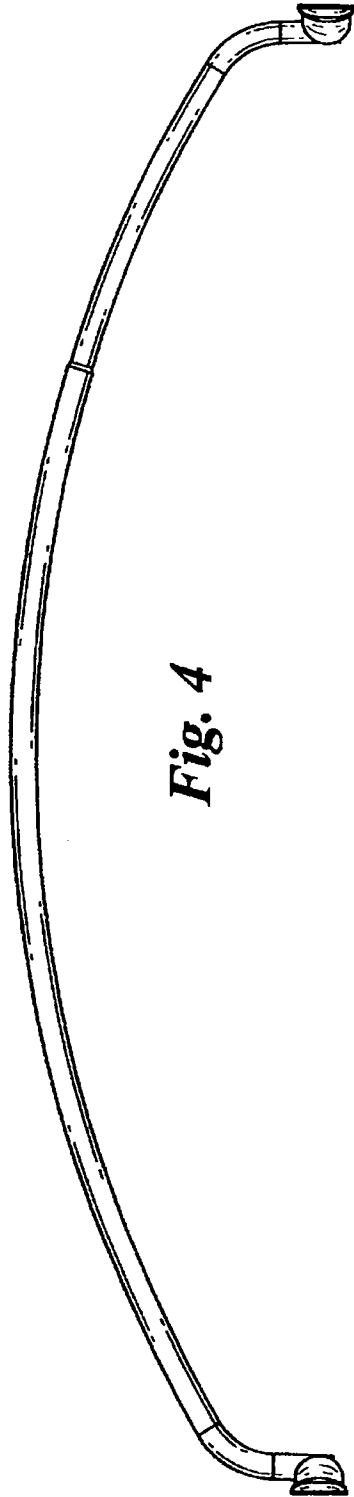


EXHIBIT B

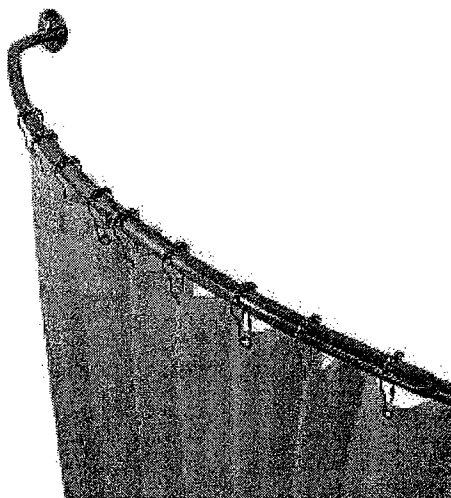

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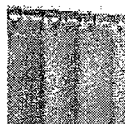
Prices, promotions, styles and availability may vary by store and online.

FEATURES	DESCRIPTION	ADDITIONAL INFO	SHIPPING INFO
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- Includes Shower Curtain Rod, Vinyl Liner, Shower Curtain Rings
- Bright White
- Wipe Clean with a Damp Cloth
- Curved Rod Extends to 72 "

Better Together

Buy this [Rod/Curtain/Ring 3-in-1 Set - Chrome](#) with [White Waffle-Weave Fabric Shower Curtain](#) today!



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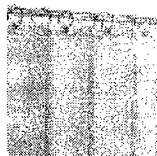
- Chrome

Our Price: **\$39.99**

Shower Curtain

Our Price: **\$24.99**

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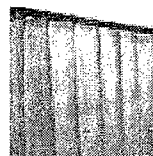
White Waffle-Weave Fabric Shower Curtain

Our Price: **\$24.99**



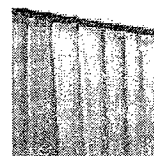
Shower Curtain Hooks (12-pk.)

Our Price: **\$9.79**



Frosty Clear Vinyl Shower Curtain Liner

Our Price: **\$6.99**



No Mildew Shower Curtain Liner - Clear

Our Price: **\$9.99**

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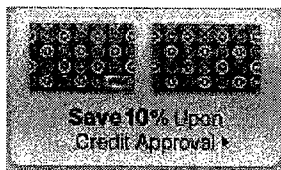
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